

REMARKS

Presently, claims 37-42 are pending in the application. Claims 16-36 have been canceled. Claims 37-42 have been allowed by the Examiner. No new matter has been added to the application.

Entry of Rule 116 Amendment

Entry of the Amendment herein is respectfully requested because such Amendment, in combination with the remarks, renders moot the Examiner's outstanding rejections under 35 U.S.C. § 103(a). The Amendment does not raise any new issues that would require further consideration and/or search, since all of the limitations in the pending claims were previously presented, considered and presumably searched. No new matter is raised by this Amendment. **The present Amendment could not have been presented earlier since it responds to a new ground of rejection made in the final rejection.** Lastly, it is requested that the Amendment be entered even if all of the rejections are not satisfied because the proposed Amendment will place the application in better form for appeal by materially simplifying the issues.

Allowable Subject Matter

The Examiner has indicated that claims 37-42 are allowable. Additionally, the Examiner has stated that claims 26-28 would be allowable if rewritten independent form to includes all limitations of the base claim and any intervening claims. Applicant thanks the Examiner for this indication of allowable subject matter.

Double Patenting

The Examiner has objected to dependent claims 26 and 27 as being substantial duplicates of independent claim 37 and dependent claim 39.

Although not necessarily agreeing with the Examiner, to further prosecution of the present application, claims 26-27 have been canceled. Reconsideration and

withdrawal of the Examiner's double patenting objection of claims 26 and 27 are respectfully requested.

Prior Art Rejection – § 103(a)

The Examiner has rejected claims 16-25 and 29-36 under 35 U.S.C §103(a) as being unpatentable over U.S. Patent No. 6,611,624 to Zhang, *et al.* ("Zhang"). Applicant respectfully traverses this rejection.

Although not necessarily agreeing with the Examiner, to further prosecution of the present application, claims 16-36 have been canceled. Accordingly, the Examiner obviousness rejection of claims 16-25 and 29-36 is moot.

With respect to the rejection of dependent claims 23, 24, 34 and 35, the Examiner has taken Official Notice (see 4 of the Office Action) that it "would have been obvious...to use the method of Zhang on multiple streams in the multiplexed bitstream in order to add advertisements to any number of the streams." However, Applicant disagrees that there are "facts outside of the record which are capable of instant and unquestionable demonstration as being 'well-known' in the art," as required by M.P.E.P. §2144.03, which would support an Examiner's finding of Official Notice.

To the extent that the Examiner's taking of Official Notice may be applied to any of the pending claims, Applicant respectfully traverses the Examiner's taking of Official Notice, and respectfully requests that the Examiner support the taking of Official Notice by producing a relevant reference that supports the Examiner's position, and that the Examiner identify a specific teaching in the reference to support a combination with Zhang.

Conclusion

In view of the foregoing remarks, Applicant respectfully submits that the Examiner's objection and rejection has been overcome, and that the application, including claims 37-42, is in condition for allowance. Reconsideration and withdrawal of the Examiner's objection and rejection and an early Notice of Allowance are respectfully requested.

Respectfully submitted,

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